

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Confirmation No.: **6730**

DeFreese *et al.*

Group Art Unit: **2435**

Serial No.: **09/475,696**

Examiner: **Pich, Ponnoreay**

Filed: **December 30, 1999**

Docket No.: **A-6307/60374.0029USU3**

For: **MECHANISM AND APPARATUS FOR ENCAPSULATION OF ENTITLEMENT
AUTHORIZATION IN CONDITIONAL ACCESS SYSTEM**

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief under 37 C.F.R. § 41.37 is submitted in support of the Notice of Appeal filed on the same day, responding to the final Office Action mailed on April 9, 2009 (Part of Paper No./Mail Date 20090406).

As set forth on page 2 of the final Office Action, Appellant wishes to apply the previously paid appeal fee and appeal brief fee to the present appeal. It is not believed that extensions of time or fees are required to consider this Appeal Brief. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fees if required therefore are hereby authorized to be charged to Deposit Account No. 13-2725.

I. Real Party in Interest

The real party in interest of the instant application is Scientific-Atlanta, Inc., having its principal place of business at 5030 Sugarloaf Parkway, Lawrenceville, GA 30044. Scientific-Atlanta, Inc., the assignee of record, is wholly owned by Cisco Systems, Inc.

II. Related Appeals and Interferences

There are no related appeals or interferences.

III. Status of Claims

Claims 85-105 stand finally rejected. No claims have been allowed. Claims 1-84 and 106 have previously been canceled. The rejections of claims 85-105 are appealed.

IV. Status of Amendments

Claim 106 has been cancelled subsequent to the final Office Action mailed on July 7, 2008. The Advisory Action mailed on October 21, 2008 entered the amendment for the purposes of appeal. No other amendments have been made subsequent to the final Office Action mailed on July 7, 2008 nor have any amendments been made subsequent to the final Office Action dated April 9, 2009. The claims in the attached Claims Appendix (see below) reflect the present state of Appellants' claims.

V. Summary of Claimed Subject Matter

The claimed inventions are summarized below with reference numerals and references to the written description (“specification”) and drawings. The subject matter described in the following appears in the original disclosure at least where indicated, and may further appear in other places within the original disclosure.

Embodiments according to independent claim 85 describe a method. The method comprises receiving an entitlement unit table (EUT), the EUT comprises an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service. *See e.g. Appellants’ specification*, page 7, lines 12-17. The method further comprises, responsive to user selection of the first service from an electronic program guide (EPG), determining whether at least one of the one or more EUNs matches an authorized EUN. *See e.g. Appellants’ specification*, page 8, lines 21-29. The method further comprises, responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service. *See e.g. Appellants’ specification*, page 9, line 4-5.

Embodiments according to independent claim 95 describe an apparatus. The apparatus comprises a tuner and a processor configured to control the tuner. *See e.g. Appellants’ specification*, page 3, lines 15-18. The processor is further configured to receive an entitlement unit table (EUT). *See e.g. Appellants’ specification*, page 4, lines 1-5. The EUT comprises an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service. *See e.g. Appellants’ specification*, page 7, lines 12-17. The processor is further configured to, responsive to user selection of the first service, determine whether at least one of the one or more EUNs matches an authorized EUN. *See e.g. Appellants’ specification*, page 8, lines 21-29. The processor is

further configured to, responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service. *See e.g. Appellants' specification*, page 9, line 4-5.

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejections are to be reviewed on appeal:

- A. Claim 95 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell et al.* (U.S. Pat. No. 4,862,268, hereinafter "*Campbell*") in view of *Hayes* (U.S. Pat. No. 4,718,107).
- B. Claims 85, 89 and 105 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Hayes* in further view of *Urakoshi et al.* (U.S. Pat. No. 6,067,564, hereinafter "*Urakoshi*").
- C. Claims 86-87 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Hayes* in further view of *Urakoshi* in further view of applicant's admitted prior art (hereinafter "AAPA").
- D. Claims 88 and 90-94 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Hayes* in further view of *Urakoshi* in further view of *Wasilewski* (U.S. Pat. No. 5,420,866, hereinafter "*Wasilewski*").
- E. Claims 96-104 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Hayes* in further view of AAPA.
- F. Claims 98-104 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Campbell* in view of *Hayes* in further view of *Wasilewski*.

VII. Arguments

For the reasons that follow, Appellants request that the rejections of claims 85-105 be overturned.

A. Rejection of Claim 95 under 35 U.S.C. §103(a): *Campbell* in view of *Hayes*

1. Appellants' Claim 95

Appellants' claim 95 provides as follows (emphasis added):

An apparatus, comprising:

a tuner; and

a processor configured to control the tuner, the processor further configured to:

receive an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;

responsive to user selection of the first service, determine whether at least one of the one or more EUNs matches an authorized EUN; and

responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service.

Appellants respectfully submit that independent claim 95 is allowable for at least the reason that a *prima facie* case of obviousness has not been set forth in the final Office Action dated April 9, 2009 (hereinafter, reference to final Office Action is a reference to the action dated April 9, 2009). The final Office Action alleges the following on pages 5-6 (emphasis added):

Campbell does not explicitly disclose the tuning is done responsive to determining that there is a match between the one or more EUNs and the authorized EUN. However, first recall that the tier code 202 seen in Figure 11 can be considered an EUN and is used to determine whether or not to allow a user access to one or more programs/services. Further, Hayes discloses receiving a user's channel selection (i.e. selection of a first service), determining whether the user should be allowed to access the channel or not, and responsive to this determination, tuning to the selected channel (col. 5, lines 6-21).

In light of Hayes's teachings, it would have been obvious to one skilled in the art at the time applicant's invention was made, to modify Campbell's teachings such

that after a user selects a first service, rather than tuning to the channel which provides the first service, the tuning is done in response to determining there is a match between the one or more EUNs and the authorized EUN. One skilled would have been motivated to do so as a matter of design choice—whether one tunes to a selected first service before or after determining that there is a match between one or more EUNs and the authorized EUN does not really matter as long as the content of the first service is not descrambled except for authorized users; the end result of content protection is the same. Further, substituting the elements in Campbell's invention which decides when the tuning actually occurs based on Hayes's teachings in the manner discussed is nothing more than simple substitution of one known element for another to achieve the predictable result of not tuning unless the one or more EUNs match an authorized EUN.

Appellants respectfully disagree that the claimed features are obvious, and believe that the proposed combination of *Campbell* and *Hayes* is improper. As set forth in further detail below, the tuning-before-determination aspect to *Campbell* appears to be necessary to the principle of operation, and its modification according to *Hayes* would not only change this principle of operation, but likely render *Campbell* unsatisfactory for its intended purpose. As set forth in well-established Federal case law:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Explaining further why the combination is improper, it is noted that the final Office Action (from the section reproduced above) relies on Figure 11 of *Campbell* for the tier code 202 received over the network as an alleged equivalent to the claimed **EUN**. It is not clear from the final Office Action what in *Campbell* is viewed as the claimed **authorized EUN**, though reference is made to steps 310, 320, 322, 324 of Figure 12 of *Campbell*, and col. 12, lines 16-15, and col. 15, lines 7-66. Since tier code 202 is identified by the final Office Action as an alleged equivalent to **EUN**, presumably, step 322 describing a comparison between the tier enable code (e.g., reference numeral 218 in Figure 11) and the program tier code 202 is one focus for the

claimed feature, and in particular, col. 15, lines 30-37 of *Campbell*. That is, it appears that the alleged equivalent to the **authorized EUN** is the tier enable code 218. In view of these observations, reference is now made to col. 12, lines 60-66 of *Campbell*, reproduced below as follows (emphasis added):

Reference is now made to FIG. 11 wherein the data formats are shown for the data transmitted on the vertical interval of the television signals between data control system 12 and addressable converter 40.

As set forth above (and elsewhere in *Campbell*), these alleged equivalents to the claimed **EUN** and **authorized EUN** are received by the converter in *Campbell* via the vertical blanking interval (VBI) from the headend (see also col. 6 of *Campbell*). Appellants are aware of another embodiment described in *Campbell* where information beyond the VBI can be utilized, but importantly, both embodiments require the information to be conveyed in the video frame field (see, e.g., col. 6, lines 31-62 and col. 18, lines 56-68 of *Campbell*). So, if one wants to watch, say, video program A, they do not merely demodulate a signal to obtain the carried information, but in addition, they tune to the channel that carries video program A. That is, once a person using *Campbell's* system selects a channel that provides program A, the converter tunes to that channel, and then and only then can the VBI (and the codes) be accessed and the comparisons made. There is no other way disclosed in *Campbell* of enabling access to the codes for purposes of comparison – that is, the principle of operation for *Campbell* is to tune first, and then access information from the video frame field. If there are plural broadcast channels (see, e.g., col. 2, lines 65-67 of *Campbell*) of programs (each program having plural video frames), how does one use *Campbell's* system to access the information in each video frame for a desired program selectable by channel number among plural broadcast channels without tuning to the channel that carries that desired program first? The final Office Action alleges that *Hayes'* solves this deficiency in meeting the claimed features. Appellants respectfully disagree for at least the reasons set forth below.

The final Office Action relies on col. 5, lines 6-21 of *Hayes*, which provides as follows:

The controller 67 also receives and processes inputs from the user via a front panel keyboard 69 in a well known manner. The keyboard enables the user to turn the converter on and off, select channels, control the volume and so forth. The controller 67 also controls the front panel display 70. The display indicates selected channel numbers and possibly other information depending on the feature content of the converter. In response to user inputs and received addressing commands, the controller generates appropriate signals on line 81 to the tuner 63 and on line 82 to the video and audio processing circuitry 64 to permit or prevent the viewing of selected channels. The control signals to the tuner are used to select the desired channel for viewing, and the control signals to the processing circuitry convey, for example, descrambling parameters.

It is not completely clear what the final Office Action is using in this section as the basis for the combination. If a user in *Hayes* makes a channel selection, unlike *Campbell*, there is no reception from a headend of information that is compared to enable an access determination. Indeed, it appears that all the information the converter of *Hayes* needs for access determinations is stored locally and largely determined by a user (see, e.g., col. 5, lines 25-47, *Hayes*). The addressing commands appear to be used to “unblock blocked channels and purge the user’s access code” (see, e.g., col. 2, lines 32-33, *Hayes*), functions which do not appear to be relevant to the comparison of stream-borne elements of *Campbell*. Even assuming *arguendo* that the addressing commands are somehow construed to apply to a comparison of stream elements, unlike *Campbell*, the addressing commands are not found in the video frame of a particular program. Accordingly, access in *Hayes* to the addressing commands does not require a tuner, but rather, merely demodulation (see, e.g., col. 3, lines 11-16, col. 4, lines 20-23 and 63-66, *Hayes*). Thus, it appears that *Hayes* uses a fundamentally different mechanism to determine access, requiring no information from a received stream to make access determinations. Even assuming *arguendo* the addressing commands can somehow be construed as stream elements subject to a comparison as in *Campbell*, the addressing commands do not require a tuner for access, and hence in this regard, such a mechanism also represents a fundamentally different manner of operation than *Campbell*.

To address the motivation alleged in the final Office Action, one questions whether these profound differences in operation can be explained away as merely “design choice” or “simple substitution?” Appellants believe the answer to that question is no, and note that, should *Campbell* fail to receive any code words in the stream via a tuning operation to be used for comparison, operation is certainly unsatisfactory since operation in *Campbell* relies on tuning to a channel to extract code words from a video frame field to enable access determinations. Further, modifying *Campbell* to not receive the requisite information from the stream also fundamentally changes the principle of operation of *Campbell*. Since the types of modifications to be implemented per *Hayes* are modifications deemed by the Federal Circuit as improper in supporting a combination of references, Appellants respectfully request that the rejection be overturned and claim 95 allowed.

B. Rejection of Claims 85, 89 and 105 under 35 U.S.C. §103(a): *Campbell*, *Hayes*, and *Urakoshi*

2. Claim 85

Appellants’ claim 85 provides as follows (emphasis added):

A method, comprising:

receiving an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;

responsive to user selection of the first service from an electronic program guide (EPG), determining whether at least one of the one or more EUNs matches an authorized EUN; and

responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service.

Appellants respectfully submit that independent claim 85 is allowable for at least the reason that a *prima facie* case of obviousness has not been set forth in the final Office Action. The final Office Action (page 6) refers to the rejection of claim 95 for the tuning-decision features of the claim, and hence referring to the rejection set forth on pages 5-6 (emphasis added):

Campbell does not explicitly disclose the tuning is done responsive to determining that there is a match between the one or more EUNs and the authorized EUN. However, first recall that the tier code 202 seen in Figure 11 can be considered an EUN and is used to determine whether or not to allow a user access to one or more programs/services. Further, Hayes discloses receiving a user's channel selection (i.e. selection of a first service), determining whether the user should be allowed to access the channel or not, and responsive to this determination, tuning to the selected channel (col. 5, lines 6-21).

In light of Hayes's teachings, it would have been obvious to one skilled in the art at the time applicant's invention was made, to modify Campbell's teachings such that after a user selects a first service, rather than tuning to the channel which provides the first service, the tuning is done in response to determining there is a match between the one or more EUNs and the authorized EUN. One skilled would have been motivated to do so as a matter of design choice—whether one tunes to a selected first service before or after determining that there is a match between one or more EUNs and the authorized EUN does not really matter as long as the content of the first service is not descrambled except for authorized users; the end result of content protection is the same. Further, substituting the elements in Campbell's invention which decides when the tuning actually occurs based on Hayes's teachings in the manner discussed is nothing more than simple substitution of one known element for another to achieve the predictable result of not tuning unless the one or more EUNs match an authorized EUN.

Appellants respectfully disagree that the claimed features are obvious, and believe that the proposed combination of *Campbell* and *Hayes* is improper. As set forth in further detail below, the tuning-before-determination aspect to *Campbell* appears to be necessary to the principle of operation, and its modification according to *Hayes* would not only change this principle of operation, but likely render *Campbell* unsatisfactory for its intended purpose. As set forth in well-established Federal case law:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Explaining further why the combination is improper, it is noted that the final Office Action (from the section reproduced above) relies on Figure 11 of *Campbell* for the tier code 202 received over the network as an alleged equivalent to the claimed **EUN**. It is not clear from the final

Office Action what in *Campbell* is viewed as the claimed **authorized EUN**, though reference is made to steps 310, 320, 322, 324 of Figure 12 of *Campbell*, and col. 12, lines 16-15, and col. 15, lines 7-66. Since tier code 202 is identified by the final Office Action as an alleged equivalent to **EUN**, presumably, step 322 describing a comparison between the tier enable code (e.g., reference numeral 218 in Figure 11) and the program tier code 202 is one focus for the claimed feature, and in particular, col. 15, lines 30-37 of *Campbell*. That is, it appears that the alleged equivalent to the **authorized EUN** is the tier enable code 218. In view of these observations, reference is now made to col. 12, lines 60-66 of *Campbell*, reproduced below as follows (emphasis added):

Reference is now made to FIG. 11 wherein the data formats are shown for the data transmitted on the vertical interval of the television signals between data control system 12 and addressable converter 40.

As set forth above (and elsewhere in *Campbell*), these alleged equivalents to the claimed **EUN** and **authorized EUN** are received by the converter in *Campbell* via the vertical blanking interval (VBI) from the headend (see also col. 6 of *Campbell*). Appellants are aware of another embodiment described in *Campbell* where information beyond the VBI can be utilized, but importantly, both embodiments require the information to be conveyed in the video frame field (see, e.g., col. 6, lines 31-62 and col. 18, lines 56-68 of *Campbell*). So, if one wants to watch, say, video program A, they do not merely demodulate a signal to obtain the carried information, but in addition, they tune to the channel that carries video program A. That is, once a person using *Campbell's* system selects a channel that provides program A, the converter tunes to that channel, and then and only then can the VBI (and the codes) be accessed and the comparisons made. There is no other way disclosed in *Campbell* of enabling access to the codes for purposes of comparison – that is, the principle of operation for *Campbell* is to tune first, and then access information from the video frame field. If there are plural broadcast channels (see, e.g., col. 2, lines 65-67 of *Campbell*) of programs (each program having plural video frames),

how does one use *Campbell's* system to access the information in each video frame for a desired program selectable by channel number among plural broadcast channels without tuning to the channel that carries that desired program first? The final Office Action alleges that *Hayes'* solves this deficiency in meeting the claimed features. Appellants respectfully disagree for at least the reasons set forth below.

The final Office Action relies on col. 5, lines 6-21 of *Hayes*, which provides as follows:

The controller 67 also receives and processes inputs from the user via a front panel keyboard 69 in a well known manner. The keyboard enables the user to turn the converter on and off, select channels, control the volume and so forth. The controller 67 also controls the front panel display 70. The display indicates selected channel numbers and possibly other information depending on the feature content of the converter. In response to user inputs and received addressing commands, the controller generates appropriate signals on line 81 to the tuner 63 and on line 82 to the video and audio processing circuitry 64 to permit or prevent the viewing of selected channels. The control signals to the tuner are used to select the desired channel for viewing, and the control signals to the processing circuitry convey, for example, descrambling parameters.

It is not completely clear what the final Office Action is using in this section as the basis for the combination. If a user in *Hayes* makes a channel selection, unlike *Campbell*, there is no reception from a headend of information that is compared to enable an access determination. Indeed, it appears that all the information the converter of *Hayes* needs for access determinations is stored locally and largely determined by a user (see, e.g., col. 5, lines 25-47, *Hayes*). The addressing commands appear to be used to "unblock blocked channels and purge the user's access code" (see, e.g., col. 2, lines 32-33, *Hayes*), functions which do not appear to be relevant to the comparison of stream-borne elements of *Campbell*. Even assuming *arguendo* that the addressing commands are somehow construed to apply to a comparison of stream elements, unlike *Campbell*, the addressing commands are not found in the video frame of a particular program. Accordingly, access in *Hayes* to the addressing commands does not require a tuner, but rather, merely demodulation (see, e.g., col. 3, lines 11-16, col. 4, lines 20-23 and 63-66, *Hayes*). Thus, it appears that *Hayes* uses a fundamentally different mechanism to

determine access, requiring no information from a received stream to make access determinations. Even assuming *arguendo* the addressing commands can somehow be construed as stream elements subject to a comparison as in *Campbell*, the addressing commands do not require a tuner for access, and hence in this regard, such a mechanism also represents a fundamentally different manner of operation than *Campbell*.

To address the motivation alleged in the final Office Action, one questions whether these profound differences in operation can be explained away as merely “design choice” or “simple substitution?” Appellants believe the answer to that question is no, and note that, should *Campbell* fail to receive any code words in the stream via a tuning operation to be used for comparison, operation is certainly unsatisfactory since operation in *Campbell* relies on tuning to a channel to extract code words from a video frame field to enable access determinations. Further, modifying *Campbell* to not receive the requisite information from the stream also fundamentally changes the principle of operation of *Campbell*.

The addition of *Urakoshi* does not remedy the impropriety of the combination of *Campbell* and *Hayes* nor remedy the deficiencies of *Campbell*. For at least the reason that the modifications alleged in the final Office Action to be implemented to *Campbell* per *Hayes* are modifications deemed by the Federal Circuit as improper in supporting a combination of references, and since *Urakoshi* does not remedy the deficiencies of *Campbell* in view of *Hayes*, Appellants respectfully request that the rejection be overturned and claim 85 allowed.

2. Claim 89

Because independent claim 85 is allowable over *Campbell* in view of *Hayes* in further view of *Urakoshi*, Appellants respectfully submit that claim 89 is allowable for at least the reason that it depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir.1988). Therefore, Appellants respectfully request that the rejection of claim 89 be overturned.

3. Claim 105

With regard to claim 105, as set forth above, Appellants respectfully submit that claim 95 is allowable over the improper combination of *Campbell* in view of *Hayes*. The addition of *Urakoshi* does not remedy the impropriety of the combination of *Campbell* in view of *Hayes* nor remedy the deficiencies of *Campbell*. For at least the reason that the modifications alleged in the final Office Action to be implemented to *Campbell* per *Hayes* are modifications deemed by the Federal Circuit as improper in supporting a combination of references, and since *Urakoshi* does not remedy the deficiencies of *Campbell* in view of *Hayes*, Appellants respectfully request that the rejection be overturned and claim 105 allowed.

C. Rejection of Claims 86-87 under 35 U.S.C. §103(a): *Campbell*, *Hayes*, *Urakoshi*, and AAPA

As set forth above, Appellants respectfully submit that *Campbell* in view of *Hayes*, in further view of *Urakoshi* fails to establish a *prima facie* case of obviousness for claim 85. The addition of AAPA does not remedy the deficiencies (as set forth above) of *Campbell*, *Hayes*, and *Urakoshi*. Thus, Appellants respectfully submit that for at least the reasons that claim 85 is allowable over *Campbell* in view of *Hayes*, in further view of *Urakoshi*, and in further view of AAPA, Appellants respectfully submit that claims 86-87 are allowable as a matter of law. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir.1988). Therefore, Appellants respectfully request that the rejection of claims 86-87 be overturned.

D. Rejection of Claims 88 and 90-94 under 35 U.S.C. §103(a): *Campbell, Hayes, Urakoshi, and Wasilewski*

As set forth above, Appellants respectfully submit that *Campbell* in view of *Hayes* in further view of *Urakoshi* fails to establish a *prima facie* case of obviousness for claim 85. The addition of *Wasilewski* does not remedy the deficiencies (as set forth above) of *Campbell, Hayes, and Urakoshi*. While *Wasilewski* teaches “providing conditional access information to decoders in a multiplexed communications system” (col. 1, lines 10-11), *Wasilewski* does not disclose or suggest either “receiving an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user” or “responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service” as recited in claim 85. Thus, Appellants respectfully submit that *Campbell* in view of *Hayes* in further view of *Urakoshi* and in further view of *Wasilewski* fails to establish a *prima facie* case of obviousness claim 85. Because independent claim 85 is allowable over *Campbell* in view of *Hayes* in further view of *Urakoshi* and in further view of *Wasilewski*, Appellants respectfully submit that claims 88 and 90-94 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir.1988). Therefore, Appellants respectfully request that the rejection of claims 88 and 90-94 be overturned.

E. Rejection of Claims 96-104 under 35 U.S.C. §103(a): *Campbell, Hayes, and AAPA*

As set forth above, Appellants respectfully submit that *Campbell* in view of *Hayes* fails to establish a *prima facie* case of obviousness for claim 95. The addition of AAPA does not remedy the deficiencies (as set forth above) of *Campbell* in view of *Hayes*. Thus, Appellants respectfully submit that *Campbell* in view of *Hayes* in further view of AAPA fails to establish a *prima facie* case of obviousness for claim 95. Because independent claim 95 is allowable over *Campbell* in view of *Hayes* in further view of AAPA, Appellants respectfully submit that claims

96-104 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir.1988). Therefore, Appellants respectfully request that the rejection of claim 96-104 be overturned.

F. Rejection of Claims 98-104 under 35 U.S.C. §103(a): *Campbell*, *Hayes*, and *Wasilewski*

As set forth above, Appellants respectfully submit that *Campbell* in view of *Hayes* fails to establish a *prima facie* case of obviousness for claim 95. The addition of *Wasilewski* does not remedy the deficiencies (as set forth above) of *Campbell* in view of *Hayes*. Thus, Appellants respectfully submit that *Campbell* in view of *Hayes* in further view of *Wasilewski* fails to establish a *prima facie* case of obviousness for claim 95. Because independent claim 95 is allowable over *Campbell* in view *Hayes* in further view of *Wasilewski*, Appellants respectfully submit that claims 98-104 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir.1988). Therefore, Appellants respectfully request that the rejection of claim 98-104 be overturned.

VIII. Conclusion

In summary, it is Appellants' position that Appellants' claims are patentable over the applied cited art references and that the rejection of these claims should be overturned. Appellants therefore respectfully request that the Board of Appeals overturn the Examiner's rejection and allow Appellants' pending claims.

In addition to the claims shown in the claims Appendix IX, Appendix X attached hereto indicates that there is no evidence being attached and relied upon by this brief. Appendix XI attached hereto indicates that there are no related proceedings.

Respectfully submitted,

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IX. Claims Appendix under 37 C.F.R. § 41.37(c)(1)(viii)

The following are the claims that are involved in this Appeal.

85. A method, comprising:
 - receiving an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
 - responsive to user selection of the first service from an electronic program guide (EPG), determining whether at least one of the one or more EUNs matches an authorized EUN; and
 - responsive to determining that there is a match between the one or more EUNs and the authorized EUN, tuning to the selected first service.
86. The method of claim 85, wherein receiving comprises receiving the EUT in an encrypted format.
87. The method of claim 85, wherein receiving comprises receiving the EUT in a nonencrypted format.
88. The method of claim 85, wherein receiving comprises receiving the EUT from an MPEG-compliant transport stream.
89. The method of claim 85, further comprising, responsive to the tuning, determining whether the selected first service is an authorized service.
90. The method of claim 89, wherein determining whether the selected first service is an authorized service comprises:
 - receiving an encrypted entitlement control message (ECM); and
 - decrypting the encrypted ECM to reveal encrypted control words and the one or more EUNs, the encrypted control words corresponding to elementary streams of the selected first service and the one or more EUNs.

91. The method of claim 90, wherein determining whether the selected first service is an authorized service further comprises:
 - determining whether at least one of the one or more EUNs matches an authorized EUN.
92. The method of claim 91, further comprising decrypting the encrypted control words responsive to determining that there is a match between the one or more EUNs and the authorized EUN.
93. The method of claim 92, further comprising decrypting the elementary streams of the selected first service based on the decrypted control words.
94. The method of claim 90, wherein receiving the encrypted ECM comprises receiving the encrypted ECM from an MPEG-compliant transport stream.
95. An apparatus, comprising:
 - a tuner; and
 - a processor configured to control the tuner, the processor further configured to:
 - receive an entitlement unit table (EUT), the EUT comprising an identifier of a first service and one or more entitlement unit numbers (EUNs) that each uniquely identify a service package that comprises one or more services available to the user, the one or more services for each of the one or more EUNs including the first service;
 - responsive to user selection of the first service, determine whether at least one of the one or more EUNs matches an authorized EUN; and
 - responsive to determining that there is a match between the one or more EUNs and the authorized EUN, configure the tuner to tune to the selected first service.
96. The apparatus of claim 95, wherein the processor is further configured to receive the EUT in an encrypted format.
97. The apparatus of claim 95, wherein the processor is further configured to receive the EUT in a nonencrypted format.
98. The apparatus of claim 95, wherein the processor is further configured to receive the EUT from an MPEG-compliant transport stream.

99. The apparatus of claim 95, wherein the processor is further configured to determine whether the selected first service is an authorized service.
100. The apparatus of claim 99, wherein the processor is further configured to:
 - receive an encrypted entitlement control message (ECM); and
 - decrypt the encrypted ECM to reveal encrypted control words and the one or more EUNs, the encrypted control words corresponding to elementary streams of the selected first service and the one or more EUNs.
101. The apparatus of claim 100, wherein the processor is further configured to determine whether at least one of the one or more EUNs matches an authorized EUN.
102. The apparatus of claim 101, wherein the processor is further configured to decrypt the encrypted control words responsive to determining that there is a match between the one or more EUNs and the authorized EUN.
103. The apparatus of claim 102, wherein the processor is further configured to decrypt the elementary streams of the selected first service based on the decrypted control words.
104. The apparatus of claim 100, wherein the processor is further configured to receive the encrypted ECM from an MPEG-compliant transport stream.
105. The apparatus of claim 95, wherein the processor is further configured to provide an electronic program guide (EPG) that enables the user to select the first service.

X. Evidence Appendix under 37 C.F.R. § 41.37(c)(1)(ix)

None.

XI. Related Proceedings Appendix under 37 C.F.R. § 41.37(c)(1)(x)

None.